

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

No. 7:12-CR-28-F

No. 7:13-CV-213-F

TIMOTHY GAINEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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**ORDER**

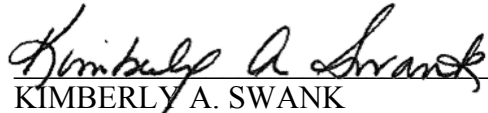
Pending before the court are Petitioner's motion to vacate pursuant to 28 U.S.C. § 2255 [DE #45] and the government's motion to dismiss Petitioner's § 2255 motion [DE #57], which have been referred to the undersigned for Memorandum and Recommendation by Senior United States District Judge James C. Fox. On March 18, 2016, an order was entered granting an evidentiary hearing on Petitioner's claim that trial counsel was ineffective in failing to file a notice of appeal and directing the Federal Public Defender to appoint counsel to represent Petitioner in connection with the hearing. The court further directed that counsel confer and provide the court with at least three mutually agreeable dates for the evidentiary hearing.

On April 6, 2016, Terry Rose filed a notice of appearance indicating she has been appointed to represent Petitioner. The court has since been advised that Petitioner was released from the custody of the Bureau of Prisons on April 5, 2016.

As a consequence, the court contacted Ms. Rose on May 9, 2016, in an attempt to determine whether Petitioner intends to proceed with his § 2255 motion. Messages have been exchanged between Ms. Rose and the court, but the court has not been able to ascertain whether Petitioner intends to proceed with his § 2255 motion, and no potential hearing dates have been provided to the court.

The court hereby ORDERS Petitioner to advise the court, on or before **September 19, 2016**, whether he intends to pursue his § 2255 motion and, if so, to provide the court with three mutually agreeable dates for the evidentiary hearing previously granted. **Petitioner is warned that failure to respond to this order will be grounds for dismissal of his § 2255 motion.**

This 25th day of August 2016.

  
KIMBERLY A. SWANK  
United States Magistrate Judge